

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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www.montgomerycountymd.gov/content/council/boa/index.asp

Case No. A-6299

PETITION OF STEPHEN C. BROWN AND AMY L. BOWSER

(Hearing held September 23, 2009)

OPINION OF THE BOARD

(Effective date of Opinion, October 16, 2009)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Sections 59-C-1.326(a)(2)(C) and 59-C-1.326(a)(2)(B). The petitioners propose the construction of an accessory structure/shed that requires variances of: (a) three (3) feet as it within two (2) feet of the side lot line; (b) three (3) feet as it is within two (2) feet of the rear lot line. The required side lot line setback is five (5) feet and the required rear lot line setback is five (5) feet.

The subject property is Lot 10, Block A, Robert H. McNeill's Addition to Silver Spring Subdivision, located at 610 Deerfield Avenue, Silver Spring, Maryland, 20910, in the R-60 Zone (Tax Account No. 03532796).

Decision of the Board: Requested variances **Granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose the construction of a 14 x 6 foot accessory structure/shed.
2. The petitioners testified that their lot is uniquely shaped at its northeast section and that the shape results in a small, shallow configuration of their rear yard. The petitioners testified that their house was built in 1908 and that Deerfield Avenue did not exist when their house was built. The petitioners testified that the house was built next to and facing a right-of-way, which is the rear yard of the lot. The petitioners testified that the right-of-way was later abandoned and that small, oddly shaped section of the right-of-way reverted to the prior owner. The petitioners testified that this small, oddly shaped

section of the property constitutes their rear yard. See Exhibit Nos. 4(a) [site plan] and 7(a) [subdivision record plat].

3. The petitioners testified that their property was larger but that a subdivision by the prior owner reduced the size of the subject property. The petitioners testified that their property adjoins M-NCPPC property and that the proposed construction would not materially impact the view of the adjoining and neighboring properties. The petitioners testified that the proposed construction received a letter of support from the Director of Parks, M-NCPPC. See Exhibit No. 11 [email correspondence Director of Parks].

FINDINGS OF THE BOARD

Based on the petitioners' binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that the subject property is uniquely shaped at its northeast section and that the shape results in the small, shallow configuration of their rear yard. The Board finds that this condition is peculiar to the subject property and that the strict application of the zoning regulations would result in practical difficulties to and an undue hardship upon the property owners.

- (b) *Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variances requested for the construction of an accessory structure/shed are minimum reasonably necessary.

- (c) *Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Board finds that the proposed construction will continue the residential use of the property and that the variances will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) *Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the proposed construction will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variances of three (3) from the required five (5) foot side lot line setback and of three (3) feet from the required five (5) foot rear lot line setback for the construction of an accessory structure/shed are granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4(a) and 4(b) and 5.

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Stanley B. Boyd, seconded by Walter S. Booth, with Carolyn J. Shawaker, in agreement, and with David K. Perdue, Vice Chair and Catherine G. Titus, Chair, in opposition, the Board adopted the foregoing Resolution.

Catherine G. Titus
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 16th day of October, 2009.

Katherine Freeman
Executive Director

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.